August 18, 2008

Via ECF

The Honorable Claudia Wilken
District Judge
United States District Court for the Northern District of California
1301 Clay Street
Oakland, California 94612-5212

Re: *California Restaurant Association v. The County of Santa Clara, et al.*
Case No. CV-08-03685 CW

Dear Judge Wilken:

We are writing on behalf of Plaintiff California Restaurant Association ("CRA") to respond to the letter sent to the Court on the afternoon of August 15 from the Santa Clara County Counsel's office. In that letter, the County of Santa Clara (the "County") seeks to modify the briefing and hearing schedule set by the Court in its Order Granting Plaintiff's Motion for an Expedited Briefing Schedule (the "Order"). The County seeks the following modification to the briefing schedule and hearing date in order to accommodate the vacation schedule of one of its attorneys:

Hearing date: September 4, 2008
Opposition brief due: August 26, 2008
Reply Brief due: August 29, 2008

As part of its proposal, the County is willing to delay enforcement of its ordinance at issue from September 1, 2008 to October 14, 2008. Under the County's proposed September 4 hearing date, the enforcement of the ordinance at issue would be stayed for roughly six weeks. This stay is agreeable to CRA because it would allow the restaurants time, in the event of an adverse ruling on the motion, to take all the steps necessary to comply with the ordinance. It takes a substantial period of time and expense for the restaurants to do all the things necessary to comply with the ordinance (e.g., determine the relevant nutritional values for all their meals, redesign menu boards and menus, and have the menus and boards produced, shipped and installed).

CRA is willing to agree to a revised briefing schedule and hearing date to accommodate the County counsel's schedule. We also believe it makes sense from an efficiency standpoint to have the motions in the above-referenced action (the "*Santa Clara*" action) and the related *San Francisco* action (Case No. 08-03247) heard on the same date --

September 4. However, we believe that the particular dates the County has proposed for the submission of its opposition brief and CRA's reply brief work an undue hardship on us and would promote inefficiency, for the reasons set forth below, and we respectfully suggest a minor adjustment of those dates.

First, while the County's proposed schedule gives the County an additional week to file its opposition papers, it does not give CRA any additional time to file its reply brief. Under the County's proposed schedule, the County will have had nearly five weeks to prepare its opposition papers. To require CRA to file its reply brief in just three days would be unfair, particularly where the County has stated that it intends to submit new factual material in its opposition papers in addition to what defendants in the *San Francisco* case submitted.

Second, under the County's proposed schedule, its opposition brief would not be due until after CRA files its reply brief in the *San Francisco* case, which is due on August 21, 2008. This would promote an unfair result by allowing the County the opportunity to respond in its opposition brief to arguments raised in CRA's reply brief in the *San Francisco* case. This would in effect make the County's opposition brief the equivalent of a sur-reply. CRA would nonetheless have only three days to file its reply brief in response to the County's opposition brief. CRA believes that this result is both inequitable and inefficient. CRA should not have to file two separate reply briefs. We have been informed that the County requested that San Francisco agree to have the reply brief in the *San Francisco* case due on the same date as the reply brief in the *Santa Clara* case; but San Francisco would not agree.

The County moved to have this case and the *San Francisco* case deemed related because the cases presented substantially the same legal and factual arguments and because transfer to the same District Judge would promote judicial efficiency. The Court already has roughly 120 pages of briefing from San Francisco and its *amici* in support of the menu labeling ordinance. We do not believe that the Court should be receiving a reply brief from CRA in the *San Francisco* case, then an opposition brief from the County attacking that reply brief, and then another reply brief from CRA responding to the County's opposition brief. That would be inefficient and unfair to CRA. In addition, we think the Court would benefit most from one consolidated reply to both oppositions and all *amici.*

Accordingly, CRA respectfully requests that Court adopt the following schedule: (1) County's opposition brief due on August 22, 2008; (2) CRA's reply brief in both the *Santa Clara* and *San Francisco* cases due on August 28, 2008; (3) the September 4, 2008

hearing date to encompass both the *Santa Clara* and *San Francisco* cases; and (4) a stay of implementation of both ordinances at issue in these cases until October 14, 2008.

Respectfully submitted,

Sarah Esmaili

cc (via facsimile): Counsel for Defendants in Case No. CV-08-03247 CW